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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA-2015-8672; Amdt. No. 91-340A]

RIN 2120-AL27

Amendment of the Prohibition against Certain Flights in Specified Areas of the Sanaa (OYSC) Flight Information Region

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This action amends the Special Federal Aviation Regulation (SFAR) that prohibits certain flights in specified areas of the Sanaa (OYSC) Flight Information Region (FIR) by all: United States (U.S.) air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except where the operator of such aircraft is a foreign air carrier. There has been a reduction in the level of risk to U.S. civil aviation operations in limited portions of the specified areas of the Sanaa (OYSC) Flight Information region (FIR) where the FAA had prohibited flight operations under the SFAR. As a result, the FAA is reducing the amount of airspace in the Sanaa (OYSC) FIR in which U.S. civil aviation operations are prohibited. However, there continues to be an unacceptable level of risk to U.S. civil aviation operations in the remainder of the specified areas of the Sanaa (OYSC) FIR, as described in this rule, resulting from terrorist and militant activity. Consequently, the

FAA is also amending this SFAR to extend its expiration date. The FAA is also republishing, with minor revisions, the approval process and exemption information for this SFAR.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Michael Filippell, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-8166; email michael.e.filippell@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action amends the prohibition of flight operations in specified areas of the Sanaa (OYSC) FIR by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except where the operator of such aircraft is a foreign air carrier. Due to a reduction in the level of risk to U.S. civil aviation operating in limited portions of the specified areas of the Sanaa (OYSC) FIR where the FAA had prohibited U.S. civil aviation operations under SFAR No. 115, title 14 Code of Federal Regulations (CFR) 91.1611, this action amends SFAR No. 115, § 91.1611, to reduce the amount of airspace in the Sanaa (OYSC) FIR in which U.S. civil aviation operations are prohibited. Specifically, the FAA is revising SFAR No. 115, § 91.1611, to prohibit U.S. civil aviation operations in the Sanaa (OYSC) FIR, except that airspace east of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), southeast of a line drawn direct from NODMA to ORBAT (140638N 0503924E) then from

ORBAT to PAKER (115500N 0463500E), south of a line drawn direct from PAKER to PARIM (123142N 0432712E), and west of a line drawn direct from PARIM to RIBOK (154700N 0415230E). However, there continues to be an unacceptable level of risk to U.S. civil aviation operations in the remainder the specified areas of the Sanaa (OYSC) FIR, as described in this rule, resulting from terrorist and militant activity. Consequently, the FAA is also amending this SFAR to extend its expiration date until January 7, 2020. The FAA finds this action necessary due to continued hazards to U.S. civil aviation operations in these areas.

II. Legal Authority and Good Cause

A. Legal Authority

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. The FAA's authority to issue rules on aviation safety is found in title 49, U.S. Code. Subtitle I, sections 106(f) and (g), describe the authority of the FAA Administrator. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, subpart III, section 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things,

regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security.

This regulation is within the scope of FAA's authority under the statutes cited previously, because it continues to prohibit the persons described in paragraph (a) of SFAR No. 115, § 91.1611, from conducting flight operations in specified areas of the Sanaa (OYSC) FIR due to the continued hazards to the safety of such persons' flight operations, as described in the Background section of this final rule.

B. Good Cause for Immediate Adoption

Title 5 U.S.C. 553(b)(3)(B) authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Section 553(d) also authorizes agencies to forgo the delay in the effective date of the final rule for good cause found and published with the rule. In this instance, the FAA finds good cause to forgo notice and comment, because notice and comment would be impracticable and contrary to the public interest. To the extent that the rule is based upon classified information, such information is not permitted to be shared with the general public. Also, threats to U.S. civil aviation and intelligence regarding these threats are fluid. As a result, the agency's original proposal could become unsuitable for minimizing the hazards to U.S. civil aviation in the affected airspace during or after the notice and comment process. The FAA further finds an immediate need to address the continued hazard to U.S. civil aviation that exists in specified areas of the Sanaa (OYSC) FIR from terrorist and militant activity. This hazard is further described in the Background section of this rule. Finally, it is contrary to the public interest to delay this change in the boundaries of the SFAR to permit

U.S. civil aviation operations on two jet routes that were previously prohibited, thereby potentially reducing travel time and costs.

For the reasons described previously, the FAA finds good cause to forgo notice and comment and any delay in the effective date for this rule. The FAA also finds that this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure that the FAA exercises its duties consistently with the obligations of the United States under international agreements.

III. Background

On January 7, 2016, the FAA published a final rule to prohibit U.S. civil aviation operations in specified areas of the Sanaa (OYSC) FIR, excluding that airspace east and southeast of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), then direct from NODMA to PAKER (115500N 0463500E), due to the hazardous situation faced by U.S. civil aviation from ongoing military operations, political instability, violence from competing armed groups, and the continuing terrorism threat from extremist elements associated with the fighting and instability in Yemen. 81 FR 727.

In taking that action, the FAA determined that international civil air routes that transit the specified areas of the Sanaa (OYSC) FIR and aircraft operating to and from Yemeni airports were at risk from terrorist and militant groups potentially employing anti-aircraft weapons, including Man-Portable Air Defense Systems (MANPADS), surface-to-air missiles (SAMs), small-arms fire, and indirect fire from mortars and rockets. Due to the fighting and instability, as of January 2016, the FAA stated that there was a risk of possible loss of state control over more

advanced anti-aircraft weapons to terrorist and militant groups. Some of the weapons that the FAA was concerned about have the capability to target aircraft at higher altitudes and/or during approach and departure and have weapon ranges that could extend into the near off-shore areas along Yemen's coastline.

In the January 2016 final rule, the FAA also indicated that U.S. civil aviation was at risk from combat operations and other military-related activity associated with the fighting and instability and that there was an ongoing threat of terrorism. Al-Qa'ida in the Arabian Peninsula (AQAP) remained active in Yemen and had demonstrated the capability and intent to target U.S. and Western aviation interests. Various Yemeni airports had been attacked during the fighting, including Sanaa International Airport (OYSN) and Aden International Airport (OYAA), resulting in instances of damage to airport facilities and temporary closure of the airports.

Additionally, in the January 2016 final rule, the FAA assessed that there was a risk to U.S. civil aviation from potential strategic SAM systems. Some of these strategic air defense SAMs, at that time, posed a potential threat to civil aviation. On March 28, 2015, a probable SAM missile was launched from the vicinity of Al Hudaydah, Yemen, along the Red Sea. Collectively, the hazards previously described led the FAA to publish SFAR No. 115, § 91.1611, on January 7, 2016.

Over the last two years, the situation in Yemen has slightly improved, as a coalition of Yemeni government forces, supporting nations, and allied militia elements have successfully limited the area of opposition force control and reduced some of the opposition force weapon capabilities. Opposition elements in Yemen do not currently possess functional medium-/long-range strategic SAM capabilities. As a result, there is a reduced level of risk to U.S. civil aviation

operations on certain international air routes that transit offshore areas of the Sanaa (OYSC) FIR. The FAA has determined that the risk to U.S. civil aviation in limited areas of the Sanaa (OYSC) FIR, including these international air routes, has been sufficiently reduced to allow the FAA to shrink the boundaries of its prohibition of U.S. civil aviation operations in specified areas of the Sanaa (OYSC) FIR.

Specifically, the FAA is revising SFAR No. 115, § 91.1611, to prohibit flight operations in the Sanaa (OYSC) FIR, excluding that airspace east of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), southeast of a line drawn direct from NODMA to ORBAT (140638N 0503924E) then from ORBAT to PAKER (115500N 0463500E), south of a line drawn direct from PAKER to PARIM (123142N 0432712E), and west of a line drawn direct from PARIM to RIBOK (154700N 0415230E). This change will permit U.S. operators to use two jet routes, UT702 and M999, that they were previously prohibited from using under SFAR No. 115, § 91.1611. The FAA emphasizes that use of jet route UN303 remains prohibited.

Opposition forces and terrorist elements continue to operate in various locations with either ongoing fighting or the potential for combat operations to occur with little or no warning. Opposition and terrorist elements, such as AQAP and the Islamic State of Iraq and ash Sham (ISIS) in Yemen, possess a variety of anti-aircraft weapons, to include MANPADS and possible SAMs, which pose an ongoing risk to U.S. civil aviation in Yemeni territory occupied by or influenced by those elements and in the specified areas of the Sanaa (OYSC) FIR within the revised SFAR boundaries described in this rule.

Therefore, as a result of the significant continuing risk to the safety of U.S. civil aviation in specified areas of the Sanaa (OYSC) FIR, with the revised boundaries previously described, the FAA also amends SFAR No. 115, § 91.1611, to extend its expiration date from January 7, 2018, to January 7, 2020, to maintain the prohibition on flight operations in those areas by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except where the operator of such aircraft is a foreign air carrier.

The FAA will continue to actively monitor the situation and evaluate the extent to which U.S. civil operators may be able to safely operate in specified areas of the Sanaa (OYSC) FIR, with the revised boundaries previously described, in the future. Further amendments to SFAR No. 115, § 91.1611, may be appropriate if the risk to aviation safety and security changes. The FAA may amend or rescind SFAR No. 115, § 91.1611, as necessary, prior to its expiration date.

The FAA also republishes, with minor revisions, the approval process and exemption information for this SFAR, so that persons described in paragraph (a) of the rule will be able to refer to this final rule, rather than having to search through previous final rules to find the relevant approval process and exemption information. This approval process and exemption information is consistent with other similar SFARs and recent agency practice.

IV. Approval Process Based on a Request From a Department, Agency, or Instrumentality of the United States Government

If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person covered under SFAR No. 115, § 91.1611, including a U.S. air carrier or a U.S. commercial operator, to conduct a charter to transport civilian or military passengers or cargo, or other operations, in the specified areas of the Sanaa (OYSC) FIR, that department, agency, or instrumentality may request that the FAA approve persons covered under SFAR No. 115, § 91.1611, to conduct such operations. An approval request must be made directly by the requesting department, agency or instrumentality of the U.S. Government to the FAA's Associate Administrator for Aviation Safety in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality. Requests for approval submitted to the FAA by anyone other than the requesting department, agency, or instrumentality will not be accepted and will not be processed. In addition, the senior official signing the letter requesting FAA approval on behalf of the requesting department, agency, or instrumentality must be sufficiently highly placed within the organization to demonstrate that the senior leadership of the requesting department, agency, or instrumentality supports the request for approval and is committed to taking all necessary steps to minimize operational risks to the proposed flights. The senior official must also be in a position to: (1) attest to the accuracy of all representations made to the FAA in the request for approval and (2) ensure that any support from the requesting U.S. government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requests for approval must be submitted to the FAA no less than 30 calendar days

before the date on which the requesting department, agency, or instrumentality wishes the proposed operations, if approved by the FAA, to commence.

The letter must be sent by the requesting department, agency, or instrumentality to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the approval request is granted. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267-8166 to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons covered under SFAR No. 115, § 91.1611, and/or for multiple flight operations. To the extent known, the letter must identify the person(s) covered under the SFAR on whose behalf the U.S. Government department, agency, or instrumentality is seeking FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service to be provided by the person(s) covered by the SFAR;
- To the extent known, the specific locations in the specified areas of the Sanaa (OYSC) FIR where the proposed operation(s) will be conducted, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the specified areas of the Sanaa (OYSC) FIR and the airports, airfields and/or landing zones at which the aircraft will take-off and land; and

- The method by which the department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (e.g., the pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or with whom its prime contractor has a subcontract(s)) for specific flight operations in the specified areas of the Sanaa (OYSC) FIR. Additional operators may be identified to the FAA at any time after the FAA approval is issued. However, all additional operators must be identified to, and obtain an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, from the FAA for operations in the specified areas of the Sanaa (OYSC) FIR, before such operators commence such operations. The approval conditions discussed below will apply to any such additional operators. Updated lists should be sent to the email address to be obtained from the Air Transportation Division by calling (202) 267-8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Michael Filippell for instructions on submitting it to the FAA. His contact information is listed in the For Further Information Contact section of this final rule.

FAA approval of an operation under SFAR No. 115, § 91.1611, does not relieve persons subject to this SFAR of their responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must also comply with the conditions of their certificate, OpSpecs, and LOAs, as applicable. Operators must further comply with all rules and regulations

of other U.S. Government departments and agencies that may apply to the proposed operations, including, but not limited to, the Transportation Security Regulations issued by the Transportation Security Administration, Department of Homeland Security.

Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety Organization will send an approval letter to the requesting department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the specified areas of the Sanaa (OYSC) FIR; and

(b) the operator's agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the specified areas of the Sanaa (OYSC) FIR.

(3) Other conditions that the FAA may specify, including those that may be imposed in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy issued by the FAA under chapter 443 of title 49, United States Code.

If the proposed operation(s) is approved, the FAA will issue an OpSpec or an LOA, as applicable, to the operator(s) identified in the original request authorizing them to conduct the approved operation(s), and will notify the department, agency, or instrumentality that requested the FAA's approval of any additional conditions beyond those contained in the approval letter. The requesting department, agency, or instrumentality must have a contract, grant, or cooperative agreement (or its prime contractor must have a subcontract) with the person(s) described in paragraph (a) of this SFAR No. 115, § 91.1611, on whose behalf the department, agency, or instrumentality requests FAA approval.

V. Requests for Exemption

Any operations not conducted under an approval issued by the FAA through the approval process set forth previously must be conducted under an exemption from SFAR No. 115, § 91.1611. A request by any person covered under SFAR No. 115, § 91.1611, for an exemption must comply with 14 CFR part 11, and will require exceptional circumstances beyond those contemplated by the approval process set forth above. In addition to the information required by 14 CFR 11.81, at a minimum, the requestor must describe in its submission to the FAA—

- The proposed operation(s), including the nature of the operation;
- The service to be provided by the person(s) covered by the SFAR;

- The specific locations in the specified areas of the Sanaa (OYSC) FIR where the proposed operation(s) will be conducted, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the specified areas of the Sanaa (OYSC) FIR and the airports, airfields and/or landing zones at which the aircraft will take-off and land;
- The method by which the operator will obtain current threat information, and an explanation of how the operator will integrate this information into all phases of its proposed operations (e.g., the pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures that the operator will use to minimize the risks, identified in the Background section of this rule, to the proposed operations, so that granting the exemption would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from other flight prohibition SFARs.

Additionally, the release and agreement to indemnify, as referred to above, will be required as a condition of any exemption that may be issued under SFAR No. 115, § 91.1611.

The FAA recognizes that operations that may be affected by SFAR No. 115, § 91.1611, including this amendment, may be planned for the governments of other countries with the support of the U.S. Government. While these operations will not be permitted through the approval process, the FAA will process exemption requests for such operations on an expedited basis and prior to any private exemption requests.

VI. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), as codified in 5 U.S.C. 603 *et seq.*, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96-39), 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined that this final rule has benefits that justify its costs and is a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, because it raises novel policy issues contemplated under that Executive Order. The rule is also "significant" as defined in DOT's Regulatory Policies and Procedures. The final rule will not have a significant economic impact on a substantial number of small entities, will not create unnecessary obstacles to the foreign commerce of the United States, and will not impose

an unfunded mandate on State, local, or tribal governments, or on the private sector, by exceeding the threshold identified previously.

A. Regulatory Evaluation

Department of Transportation Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

Due to the significant hazards to U.S. civil aviation described in the Background section of this rule, this rule extends the prohibition against U.S. civil flights in specified areas of the Sanaa (OYSC) FIR, as described in this rule. Since there has been a reduction in the level of risk to U.S. civil aviation operations in limited portions of the specified areas of the Sanaa (OYSC) FIR in which the FAA had previously prohibited such operations, this action amends SFAR No. 115, § 91.1611, to reduce the amount of airspace in which U.S. civil flight operations are prohibited. This change will permit U.S. operators to use two jet routes that they were previously prohibited from using under SFAR No. 115, § 91.1611: UT702 and M999.

The FAA believes there are very few U.S. operators who wish to operate in the specified areas of the Sanaa (OYSC) FIR where U.S. civil aviation operations will continue to be prohibited. The FAA has not received any requests for approval or exemption to conduct flight operations in the specified areas of the Sanaa (OYSC) FIR covered by this regulation. Consequently, the FAA estimates the costs of this rule to be minimal. These minimal costs are

exceeded by the benefits of avoided deaths, injuries, and property damage that could result from a U.S. operator's aircraft being shot down (or otherwise damaged) due to the hazards described in the Background section of this final rule. In addition, allowing U.S. civil aviation to use the M999 and UT702 routes will benefit U.S. operators who regularly transit the Middle East area, since they will no longer be required to use less direct routes. This change may reduce flight times and certain operating expenses, such as fuel, resulting in potential cost savings for affected U.S. operators. Consequently, the FAA estimates that the benefits of this rule will exceed the costs.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the

agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. As discussed above, the FAA estimates the costs of this rule to be minimal. Moreover, few, if any, operators will be affected by this rule, as the FAA believes that most operators do not wish to operate in specified areas of the Sanaa (OYSC) FIR in which U.S. civil flight operations will continue to be prohibited, due to the hazards described in the Background section of this rule. Additionally, this rule will allow U.S. civil aviation to use the M999 and UT702 routes, and, to that extent, it may benefit small U.S. operators if they regularly transit the Middle East area, since they will no longer be required to use less direct routes. This change may reduce flight times and certain operating expenses, such as fuel, resulting in potential cost savings for affected small U.S. operators.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires

consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from a hazard to their operations in specified areas of the Sanaa (OYSC) FIR, a location outside the U.S. Therefore, the rule is in compliance with the Trade Agreements Act.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155.0 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA's policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this regulation.

G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions (44 FR 1957, January 4, 1979), and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined that this action is exempt pursuant to Section 2-5(a)(i) of Executive Order 12114, because it does not have the potential for a significant effect on the environment outside the United States.

In accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 8-6(c), FAA has prepared a memorandum for the record stating the reason(s) for this determination; this memorandum has been placed in the docket for this rulemaking.

VII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This rule is not subject to the requirements of EO 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States.

VIII. Additional Information

A. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

- Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
- Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies or
- Accessing the Government Publishing Office's web page at <http://www.fdsys.gov>.

Copies may also be obtained by sending a request (identified by amendment or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Please identify the docket or amendment number of this rulemaking in your request.

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced above.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires FAA to comply with small entity requests for information or advice about compliance with

statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the FOR FURTHER INFORMATION CONTACT section at the beginning of the preamble. To find out more about SBREFA on the Internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Yemen.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

2. Revise § 91.1611 to read as follows:

§ 91.1611 Special Federal Aviation Regulation No. 115—Prohibition Against Certain Flights in Specified Areas of the Sanaa (OYSC) Flight Information Region (FIR).

(a) *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to the following persons:

(1) All U.S. air carriers and U.S. commercial operators;

(2) All persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and

(3) All operators of U.S.-registered civil aircraft, except where the operator of such aircraft is a foreign air carrier.

(b) *Flight prohibition.* Except as provided in paragraphs (c) and (d) of this section, no person described in paragraph (a) of this section may conduct flight operations in the Sanaa (OYSC) Flight Information Region (FIR), except that airspace east of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), southeast of a line drawn direct from NODMA to ORBAT (140638N 0503924E) then from ORBAT to PAKER (115500N 0463500E), south of a line drawn direct from PAKER to PARIM (123142N 0432712E), and west of a line drawn direct from PARIM to RIBOK (154700N 0415230E). Use of jet route UT702 is authorized; however, use of jet route UN303 is not authorized.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the Sanaa (OYSC) FIR in that airspace west of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), northwest of a line drawn direct from NODMA to ORBAT (140638N 0503924E) then from ORBAT to PAKER (115500N 0463500E), north of a line drawn direct from PAKER to PARIM (123142N 0432712E), and east of a line drawn direct from PARIM to RIBOK (154700N 0415230E), provided that such flight operations are conducted under a contract, grant, or cooperative agreement with a department, agency, or instrumentality of the U.S. government (or under a subcontract between the prime contractor of the department, agency, or instrumentality, and the person subject to paragraph (a)), with the approval of the FAA, or under

an exemption issued by the FAA. The FAA will process requests for approval or exemption in a timely manner, with the order of preference being: first, for those operations in support of U.S. government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. government department, agency, or instrumentality; and third, for all other operations.

(d) *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR part 119, 121, 125, or 135, each person who deviates from this section must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office (FSDO) a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons for it.

(e) *Expiration.* This SFAR will remain in effect until January 7, 2020. The FAA may amend, rescind, or extend this SFAR as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on December 8, 2017.

Michael P. Huerta,
Administrator.

